

DICTION

## SOVEREIGN IMMUNITY

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ment and Assistance Act of 1954 (7 U.S.C. §§ 1691 *et seq.*). The Charter Party contained an arbitration clause. Dispute arose over bottom damage sustained by the ship at the discharge berth. The Purchase Directorate refused to appoint an arbitrator. Petrol Shipping Corporation thereupon filed petition in the U.S. District Court under section 4 of the United States Arbitration Act (9 U.S.C. § 4), to compel arbitration. Service of process was made by mail upon the Purchase Directorate in Washington and in New York and upon the Directorate's "proctors". The Purchase Directorate appeared specially and submitted a suggestion of the Greek Ambassador that Greece was entitled to sovereign immunity. The Department of State did not file a suggestion of immunity in the case. The District Court denied the petition to compel arbitration on the ground of sovereign immunity. This denial was affirmed by a panel of the Court of Appeals for the Second Circuit (326 F.2d 117 (2d Cir. 1964)), but upon rehearing the case was remanded for further development of the facts (332 F.2d 370 (2d Cir. 1964)). Upon remand, the District Court, relying upon a case decided in the interim, *Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes*, (336 F.2d 354 (2d Cir. 1964), certiorari denied 381 U.S. 934 (1965)), where it was held, in a substantially similar fact situation, that, despite a plea of immunity, a branch of the Spanish Ministry of Commerce could be sued without its consent, refused to recognize such immunity and directed the Purchase Directorate to proceed to arbitration under the arbitration clause (37 F.R.D. 437 (S.D.N.Y. 1965)).

On appeal, the Court of Appeals for the Second Circuit affirmed the District Court's action. The Court accepted an argument given in the *amicus curiae* brief of the United States, which stated

"... the immunity of sovereign did not present a 'jurisdictional' defect such as improper service might. Under the Supreme Court's analysis [in *Ex Parte [Republic of] Peru*, 318 U.S. 578 [63 S.Ct. 793, 87 L.Ed. 1014] (1943)], it appears that in an action against a sovereign just as in any other suit, jurisdiction must be acquired either by service of process, or by the defendant's appearance in court, or *in rem* by seizure and control of property. Only after such jurisdiction is acquired, does the sovereign immunity defense properly [*sic*] come into consideration. Instead of being a 'jurisdictional' matter in the same sense as acquiring jurisdiction over a person or property, sovereign immunity presents a ground for relinquishing the jurisdiction previously acquired."

At the point of sovereign immunity, the Court stated:

"On the question of sovereign immunity this case is identical to *Victory Transport, Inc.*, . . . [336 F.2d 354 (2d Cir. 1964), cert. den. 381 U.S. 934 (1965)]. There this court held that the claim

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